

Pollution Control Hearings Board  
Shorelines Hearings Board  
Forest Practices Appeals Board  
Hydraulic Appeals Board  
Environmental and Land Use Hearings Board



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Email: eho@eho.wa.gov  
Website: www.eho.wa.gov

STATE OF WASHINGTON  
ENVIRONMENTAL HEARINGS OFFICE

Mailing Address: PO Box 40903, Olympia, WA 98504-0903

Physical Address: 4224 - 6th Ave. SE, Bldg. 2, RoweSix, Lacey, WA 98504-0903

November 28, 2007

Kenneth Carlson  
Ocean Park Concrete  
2308 270<sup>th</sup> Place  
Ocean Park WA 98640

Laura Watson  
Assistant Attorney General  
Department of Ecology  
PO Box 40117  
Olympia WA 98504-0117

RE: PCHB NO. 07-068 (Order No. 4188)  
PCHB NO. 07-088 (Penalty No. 4187)  
**OCEAN PARK CONCRETE v. ECOLOGY**

Dear Parties:

Enclosed is an Order of Dismissal.

The Board appreciates your efforts in resolving this appeal.

Sincerely yours,

Cassandra Noble  
Administrative Appeals Judge, Presiding

CN/P07-068

Enc.

Cc: Marc Pacifico, Ecology  
Ecology Fiscal Office

**CERTIFICATION**

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid to the attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.  
DATED NOV 28, 2007 at Lacey, WA

POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

OCEAN PARK CONCRETE,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB NO. 07-068 & 07-088  
(Consolidated)

**ORDER OF DISMISSAL**

The parties have submitted a settlement agreement resolving the issues on appeal including an agreement to dismiss the appeal. Accordingly, there being no contested case,

IT IS ORDERED that the appeal is hereby DISMISSED with prejudice.

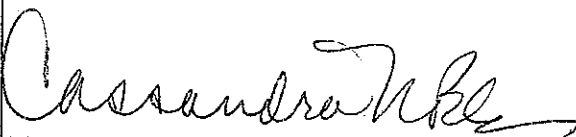
DONE this 28<sup>th</sup> day of November 2007.

POLLUTION CONTROL HEARINGS BOARD

  
KATHLEEN D. MIX, Chair

  
WILLIAM H. LYNCH, Member

  
ANDREA MC NAMARA DOYLE, Member

  
CASSANDRA NOBLE, Presiding  
Administrative Appeals Judge

ORDER OF DISMISSAL  
PCHB NO 07-068

RECEIVED  
NOV 16 2007

ENVIRONMENTAL  
HEARINGS OFFICE

POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

OCEAN PARK CONCRETE,

PCHB No 07-088

Appellant,

SETTLEMENT AGREEMENT

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

Respondent, State of Washington, Department of Ecology (Ecology), represented by Laura Watson, Assistant Attorney General, and Appellant, Ocean Park Concrete, represented by Kenneth Carlson, hereby submit this Settlement Agreement (Agreement) to the Pollution Control Hearings Board (Board) as a full and final settlement of the above-referenced appeal, and request that the Board dismiss the appeal with prejudice.

**I. BACKGROUND**

1. On May 4, 2007, Ecology issued Penalty No 4187 (Penalty) in the amount of \$15,000 00 to Ocean Park Concrete.

2. On May 17, 2007, Ecology received Ocean Park Concrete's Application for Relief from Penalty. Ecology issued a Notice of Disposition Upon Application for Relief From Penalty No 4187 and affirmed its original penalty

3. Ocean Park Concrete timely appealed the Notice of Disposition to the Board. This appeal was consolidated with an appeal of Order No. 4188. Issues involving Order No. 4188 have been settled.

4. Ecology and Ocean Park Concrete have agreed to resolve the appeal of Penalty No. 4187 through the settlement outlined below.

## II. SETTLEMENT AGREEMENT

The parties desire to resolve the dispute herein and avoid the cost and time associated with further litigation. The parties therefore stipulate and agree as follows:

### A. SCOPE

This Agreement constitutes the entire agreement between the parties to this appeal, and settles all issues raised by Penalty No. 4187. Ecology agrees to deem Penalty No. 4187 satisfied upon Ocean Park Concrete's satisfactory and timely completion of its obligations under this Agreement. This Agreement applies only to Penalty No. 4187 issued on May 4, 2007, and does not in any way limit Ecology's authority to issue other penalties or enforcement actions for violations that are not addressed in Penalty No. 4187.

### B. RESOLUTION OF PENALTY

#### 1. Cash Payment

Ecology must receive Ocean Park Concrete's payment of \$1,400.00 within 30 calendar days of the date the Board dismisses this appeal. If the 30th day falls on a holiday or weekend, payment shall be due on the next business day. Ocean Park Concrete shall make the payment by check or money order directly payable to "Department of Ecology" and make reference to Penalty No. 4187, and shall send the payment to:

Department of Ecology  
Attn: Cashiering Section  
P.O. Box 5128  
Lacey, WA 98509-5128

If Ecology does not receive Ocean Park Concrete's payment of \$1,400.00 within thirty (30) days of the Board's dismissal of this appeal, the full penalty amount of \$15,000.00 will

1 become immediately due and payable without further right of administrative or judicial review,  
2 except as provided in Paragraph C of this Agreement.

3       **2. Supplemental Environmental Project (SEP)**

4           (a) In order to satisfy the remainder of the penalty, Ocean Park Concrete  
5 shall have the option of donating \$5,600.00 of money or in-kind services to a supplemental  
6 environmental project. The SEP must be mutually agreed upon by Ocean Park Concrete and  
7 Marc Pacifico on behalf of Ecology. The SEP must be completed no later than October 31,  
8 2008. If Ocean Park Concrete donates in-kind services instead of money, Ocean Park Concrete  
9 and Ecology shall develop a method to determine and account for the value of services  
10 provided.

11           (b) If Ecology and Ocean Park Concrete do not agree upon a SEP by  
12 January 15, 2008, Ocean Park Concrete agrees to pay the amount of \$5,600.00 to Ecology at  
13 the address listed in Paragraph B(1) above. Payment under this paragraph must be received by  
14 Ecology no later than January 31, 2008.

15       **C. REMEDIES**

16           In the event that Ocean Park Concrete violates the terms of this Agreement, Ecology  
17 may pursue all remedies available by law. By entering into this Agreement, Ocean Park  
18 Concrete has waived its right of administrative or judicial review on the underlying merits of  
19 the Penalty. However, Ocean Park Concrete does not waive the right to contest whether  
20 violations of this Agreement have occurred. Ecology shall be entitled to recover its costs,  
21 including attorney fees, in any action brought to enforce this Agreement in which Ecology is a  
22 prevailing party. If Ecology is not a prevailing party, Ocean Park Concrete shall be entitled to  
23 recover its costs, including attorneys' fees.

1 **D. VENUE**

2 Ocean Park Concrete agrees that the venue for any judicial action to enforce this  
3 Agreement and/or to collect the Penalty, or any portion thereof, shall be in Thurston County  
4 Superior Court.

5 **E. SERVICE**

6 In the event Ecology pursues any remedy in Thurston County Superior Court, Ocean  
7 Park Concrete agrees to accept service of the summons and complaint by Kenneth Carlson via  
8 certified United States mail in lieu of personal service, at Ecology's option. Service by mail  
9 shall be deemed complete upon the third day following the day the summons and complaint are  
10 placed in the mail. The current address that Ecology has for Kenneth Carlson is: 2308 270<sup>th</sup>  
11 Place, Ocean Park, WA 98640-4500. Mr. Carlson agrees to accept service at this address  
12 unless Mr. Carlson informs Ecology in writing of any changes to this address.

13 If Ocean Park Concrete pursues any remedy under this Agreement in Thurston County  
14 Superior Court, Ecology agrees to accept service of the summons and complain via certified  
15 United States mail in lieu of personal service, at Ocean Park Concrete's option. The address  
16 for service by certified mail is to: Department of Ecology, SWRO Water Quality Program,  
17 P.O. Box 47775, Olympia, WA 98504-7775.

18 **F. WAIVER OF APPEAL RIGHTS**

19 Ocean Park Concrete understands that it has the right to contest Penalty No. 4187 and  
20 the Notice of Disposition by presenting evidence at a Board hearing. Ocean Park Concrete  
21 voluntarily waives its right to a hearing upon signature and acceptance of this Agreement by  
22 representatives for Ocean Park Concrete and Ecology.

23 **G. RELEASE OF LIABILITY**

24 Ocean Park Concrete and its heirs, assigns, or other successors in interest, agree to  
25 release and discharge the Department of Ecology and its officers, agents, employees, agencies,  
26

1 and departments from any damages and causes of action of any nature arising out of the  
2 incidents that gave rise to this appeal.

3 **H. DISMISSAL OF APPEAL**

4 The parties consent to the submission of this Agreement to the Board and request that,  
5 based upon a full and final settlement having been reached, the Board dismiss this appeal with  
6 prejudice. Both parties further agree to bear their own costs and attorneys' fees associated with  
7 this appeal.

8 **I. EFFECTIVE DATE**

9 This Agreement shall become effective upon issuance of the Board's order dismissing  
10 this appeal.


11 **J. SIGNATORIES AUTHORIZED**

12 The undersigned representatives for Ecology and Ocean Park Concrete certify that they  
13 are fully authorized by the party whom they represent to enter into the terms and conditions of  
14 this Agreement and to legally bind such party thereto.

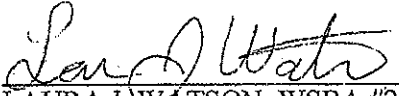
15 **K. EXECUTION**

16 This document may be executed in counterparts and may be executed by facsimile, and  
17 each executed counterpart shall have the same force and effect as the original instrument.

18 WASHINGTON STATE  
19 DEPARTMENT OF ECOLOGY

20   
21 GARIN SCHRIEVE, Section Manager  
22 Water Quality Program  
23 Southwest Regional Office

24 Dated: November 8, 2007

25   
26 LAURA J. WATSON, WSBA #28452  
27 Assistant Attorney General  
28 Attorney for Respondent

29 Dated: 11/9/2007

OCEAN PARK CONCRETE

\_\_\_\_\_  
KENNETH CARLSON

Dated: \_\_\_\_\_

NOV-06-2007 TUE 12:43 PM AG ECOLOGY DIVISION

FAX NO. 3605866760

P. 06/08

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2 incidents that gave rise to this appeal.

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18 WASHINGTON STATE  
19 DEPARTMENT OF ECOLOGY

20 GARIN SHRIEVE, Section Manager  
21 Water Quality Program  
22 Southwest Regional Office

23 Dated: \_\_\_\_\_

24 LAURA J. WATSON, WSBA #28452  
25 Assistant Attorney General  
26 Attorney for Respondent

Dated: \_\_\_\_\_

OCEAN PARK CONCRETE

Kenneth Carlson  
KENNETH CARLSON

Dated: Nov 8, 2007